IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1101 of 2003
With
SPECIAL CIVIL APPLICATION No. 1102 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANKITA JAGDISHCHANDRA MADHU - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1,
MS MANISHA L SHAH AGP for Respondent(s) : 1,
MR PRAKASH K JANI for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/09/2006

ORAL JUDGMENT

1. These petitions involve similar question of fact and law. They are, therefore, heard together and are disposed of by common order.

2. In the nutshell facts leading to the petitions are as follows:

2.1. Petitioner of Special Civil Application No.1101/03 one Ms. Ankita Madhu had applied for admission to the course of Masters of Science Computer Application & Information Technology called as M.Sc (CA & IT) run by North Gujarat University from its own resources. This petitioner had secured 67.83% marks in HSC examination conducted by Gujarat Board in March, 2002. Likewise petitioner of Special Civil Application No. 1102/03 one Shri Bhavesh Patel had also applied for the same course in the same year. He had secured 67% marks in his HSC examination.

2.2. Respondent no.2-North Gujarat University had

160 seats available for the said course. 80 of these seats were free seats. Remaining 80 seats were payment seats.

2.3. Petitioners applied for admission in response to advertisement issued by respondent no.2. They applied sometime in July, 2002. The respondent no.2 prepared a merit list according to the performance of the candidates in the HSC examination. Petitioner Ms. Ankita Madhu was placed at Sr. No.167 in the merit list and petitioner Shri Bhavesh Patel was placed at Sr. No.181 of the merit list.

3. It is not in dispute that at the time of operating the merit list, neither of these petitioners could get admission in the free seats of the course. Since 80 candidates with more merit marks were willing to accept admissions in the free seats, these petitioners at the relevant time in July, 2002 could not be accommodated against free seats. Both the petitioners, therefore, were offered and accepted admissions in payment seats.

4. It is also not in dispute that petitioner Ms. Ankita Madhu was the highest ranked candidate in the payment seat and petitioner Shri Bhavesh Patel was the candidate with second highest marks securing admission in the payment seat. Thus both these petitioners in so far as merits go, were at Sr. Nos. 1 and 2 right behind the candidates securing admission in free seats. This was so sine students between merit no.167 (Ankita Madhu) and 181 (Bhavesh Patel) did not accept admission.

5. It is the case of the petitioners that while granting admissions to them they were assured that in future if vacancies arise in the free seats on account of some of the candidates withdrawing their admissions, they would be accommodated on the free seats. On this promise both the petitioners took admissions in the payment seats and paid initially a sum of Rs.6,000/- each with the requirement of payment of balance fee of Rs. 24,000/- before 18th July, 2002. These petitioners accordingly also paid up the remaining amount of Rs.24,000/- each before the last date of 18th July, 2002.

6. It is the case of the petitioners that subsequently the Centralized Admission Committee of the State Government undertook the exercise of granting admissions to various Engineering, Medical and related branches to the students passing out 12th Standard in the year 2002. On account of some of the students who had earlier secured admissions in the free seats of M.Sc course later on receiving admissions in other branches of their choice, withdrew their admissions from respondent no.2-University. This gave rise to certain free seats becoming vacant.

7. It is the case of the petitioners that against vacancies thus created in free seats, the petitioners should have been accommodated. It is the case of the petitioners that at the very outset such a promise was held out to them on the basis of which they had accepted admissions in payment seats. It is the case of the petitioners that immediately upon such vacancy arising, the petitioners started sending representations to the University which

representations were not replied to. The petitioners, therefore, approached this Court and filed these petitions with a prayer for refund of fees already paid by them and for accommodating the petitioners in non-payment seats.

8. On the other hand through affidavits filed, respondent no.2-University has resisted the petitions. It is primarily contended that as per Clause 7.9 of the prospectus circulated by the University, fee once deposited is non-refundable. That the petitioners secured admissions in payment seats since as per their merits and their ranking in the merit list, they could not get admissions in the free seats.

9. It is on the basis of these factual aspects that learned advocates appearing for the parties, have made submissions before this Court.

10. Learned advocate Shri K.B.Pujara for the petitioners submitted that petitioners were granted admissions in payment seats with a clear

understanding that if in future vacancies arise in free seats, the petitioners would be accommodated. He submitted that as a matter of fact such a situation did arise since several candidates withdrew admissions from non-payment seats, respondent no.2, therefore ought to have accommodated the petitioners in the free seats.

10.1. He further contended that respondent no.2-University could not have admitted any other students in the free seats since such students would necessarily have less merit than the petitioners. This would give rise to injustice.

10.2. It was contended that as per Clause 7.11 of the prospectus of the University, admission process was to continue till finalization of the admission by the Joint Admission Committee and the petitioners should have been given benefit of vacancy arising in non-payment seats. On the basis of additional affidavit filed by the petitioners on 5th August, 2006, he pointed out that the admission process in the Centralized Admission Committee, commenced on 11st

September, 2002 and even the first round of councelling went on right upto October, 2002. He pointed out that further reshuffling and councelling went right upto December, 2002.

11. On the other hand learned advocate Shri Jani for the University while opposing the petitions submitted that fee once paid was non-refundable. He stated that University is running the course from its own resources without any aid from the Government. He submitted that in the past though there were large number of students seeking admissions in the said course, with passage of time and decreasing popularity of the course, sufficient number of students were not available to fill up all payment seats. He, therefore, submitted that the petitioners cannot be shifted from payment seats to non-payment seats.

11.1. He further submitted that the entire admission process of the University was over some time in middle of July, 2006. Petitioners had willingly paid up the fees as also the second

installment. They could thereafter not stake their claim on non-payment seats.

11.2. He submitted that direction for refunding fees would deplete the recourses of the University. This Court in a writ jurisdiction should not entertain money claims.

12. Having heard learned advocates appearing for the parties, it may be noted that there is hardly any dispute about the factual aspect which is taken note of herein above. Both the petitioners in the first round of granting of admissions failed to secure admissions on non-payment seats. They were however, at Sr. Nos. 1 and 2 in merit list of payment seats out of the students admitted in non-payment seats. Ordinarily, therefore, if there were vacancies arising in non-payment seats, subsequently, question of accommodating any of the students arose, these petitioners would have priority claim over any other candidates. Any other view would lead to anomalous and unfair situation whereby students with less merits would secure admission in non-payment seats

whereas students with higher percentage of marks would be retained in payment seats.

13. Question is whether respondent no.2 had to reshuffle admissions once already granted.

14. Clause 7.11 of the prospectus of the University in this regard bares considerable significance and reads as follows:

> “7.11. Admission procedure will be continue with the central admission process of Medical and Engineering colleges of Gujarat State against vacant seat arises. Candidates will be called and will be offered admission against vacant seat available according to the merit list. The merit list will be operated upto last candidate on Merit list accessed. In this later admission process candidates will be intimated by letter from the computer center.”

15. It can thus be seen that the University itself had declared that its admission procedure will continue with the Centralized Admission Process of Medical and Engineering Colleges and if vacancies arise, candidates will be called and will be offered admission against vacant seats available according to the merit list. Merit list will be operated upto last candidate. Reference to operation of the merit list has to be understood as to the entire merit list and cannot be confined to admitting new students to the course. In that view of the matter, when some of the candidates earlier securing admission in the free seats withdrew their admissions, University had to operate the merit list further and had to offer such vacancies to the petitioners herein in their turn. If seats had fallen vacant after admission process of Admission Committee coming to an end, University would have been justified in refusing to reshuffle, treating its admission process as closed in terms of Clause 7.11.

16. Any other view would lead to anomaly and making clause 7.11 of the prospectus wholly unworkable. As

noticed earlier, if respondent no.2-University is permitted to offer such subsequent vacancies to candidates who had not got admission in either of the two kinds of seats but were in the waiting list, less meritorious students would secure admission in the non-payment seats and more meritorious students would end up pursuing the course by paying full fees for the entire duration of the course.

16.1. Contention of respondent no.2-University that once having secured admissions in payment seats, students cannot be brought over to non-payment seats cannot be accepted as the said reshuffling is clearly envisaged in Clause 7.11 as discussed above. As noted, any other view would lead to anonymous application of the said clause.

17. Admittedly, however, there is slight difference between the petitioners Ms. Ankita Madhu and Shri Bhavesh Patel.

17.1. In so far as Ms. Ankita Madhu is concerned, she was highest ranked student receiving admission in

the payment seat. She was placed at Sr. No.167 in the merit list against 80 free seats, all other candidates higher than this petitioner either secured admission or did not opt for it for their personal preference though were getting admission in free seats. Thus, requirement to operate the merit list further in case of available vacancies would immediately cover this petitioner and propel her from the payment seat to non-payment seat. Case of petitioner Shri Bhavesh Patel is somewhat different. He was placed at Sr. No.181 in the merit list. Between him and petitioner Ms. Ankita there were large number of other students who had more marks than petitioner Shri Bhavesh Patel. These candidates did not accept admission on payment seats. Requirement to operate the merit list further to fill up the subsequent vacancies in non-payment seats would ensure that such seats would be for the first instance offered to such students. It would be entirely forcible that some of them might have accepted the admissions since they were now getting admissions in non-payment seats. In that view of the matter, on account of vital factual difference

between these two petitioners, ultimate result may have to be somewhat different.

17.2. Learned advocate Shri Pujara however submitted that other candidates have not come forward to stake their claims against non-payment seats and that, therefore, second petitioner also be given benefit of admission in non-payment seat. I am afraid that such a contention cannot be accepted in this case. Those candidates probably would not have been aware about the availability of the vacancies. It is primarily the mis-interpretation of the University which has brought about the situation. Had at the relevant point of time clause 7.11 been applied properly, it is entirely possible that said petitioner would still not have got admission in non-payment seat.

18. Petitioners had been representing to the University to grant them admissions in the non-payment seats immediately upon vacancy arising. It is not difficult to appreciate that atleast Ms. Ankita Madhu would have secured admission in payment

seats with a clear possibility of non-payment seat being available since atleast some students would get placement in other technical branches of their choice and vacate non-payment seats and she was virtually first candidate awaiting being accommodated in the non-payment seat.

19. In view of the above discussion, I find that respondent no.2 erred in not offering the non-payment seat to petitioner Ms. Ankita even when the vacancy arose and she deserved such consideration as per her merit. Respondent no.2-University ought to have operated the merit list further and ought to have accommodated the said petitioner in non-payment seat. In case of Shri Bhavesh Patel however, on account of factual difference he cannot receive the same benefit due to reasons mentioned above.

20. In the result Special Civil Application No.1101/03 is allowed. Respondent no.2 is directed to accommodate petitioner Ms.Ankita on non-payment seat and give consequential effect thereof in terms of refunding the additional fee so far collected.

This will be however in facts of the case, without interest if so done within a period of two months from the date of receipt of a copy of this order. In case of delay, the payment shall carry simple interest at the rate of 9% p.a. from the said date till actual payment. Rule is made absolute. No costs. Special Civil Application No.1102/03 fails. Rule is discharged. No costs.

(Akil Kureshi, J.)

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